IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 25388 of 2007(V)

EOP.162/2005 of PRL.M.C.,KOZHIKODE-II

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PETITIONER:

NAFEESA PALAT, AGED 42 YEARS,
D/O.MAJEED PALAT, KODIYATHUR AMSOM,
PANNIKKODE DESOM & POST, MUKKAM VIA,
KOZHIKODE TALUK.

BY ADV. SRI.T.R.RAVI, SRI.C.V.MANUVILSAN

RESPONDENTS:

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1. UMA UNNIKRISHNAN, AGED 33 YEARS,
W/O.UNNIKRISHNAN, UNIKORANKUNNATH HOUSE,
KODIYATHUR AMSOM, PANNIKKODE DESOM & POST,
VIA MUKKAM, KOZHIKODE TALUK.

2. VENNAKKATT THODI KAMALA, AGED 33
YEARS, W/O.NARAYANAN, KODIYATHUR AMSOM,
PANNIKKODE DESOM & POST, VIA MUKKAM,
KOZHIKODE TALUK.

3. PADMAVATHI, AGED 28 YEARS,
W/O.SIVADASAN, KALAKKODE KUNNATH,
KODIYATHUR AMSOM, PANNIKKODE DESOM & POST,
VIA MUKKAM, KOZHIKODE TALUK.

4. ABDUL RAHIMAN, RETURNING OFFICER,
WARD NO.8, KODIYATHUR GRAMA PANCHAYATH,
SR.SUPDT (INSPECTION & AUDIT), CIVIL STATION.

5. DISTRICT COLLECTOR, CIVIL STATION, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the IA 2604/06 in EOP.162/2005

Ext.P2 copy of the affidavit filed along with I.A. 2841/06 in EOP.162/2005

Ext.P3 true copy of the order in I.A. 2841/06 in EOP.162/2005 dated 3.7.2007.

M.N.Krishnan, J.

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W.P(C).No.25388 of 2007

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Dated this the 14th day of November, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Principal Munsiff, Kozhikode II in I.A.No.2841 of 2006 in E.O.P.No.162 of 2005. As per Ext.P2 application, the writ petitioner seeks permission to sort out the documents in the presence of the counsel for the respondents and the Junior Superintendent. The Election Petition is filed on the ground of double voting that 12 persons have exercised their franchise in two booths which is against the provisions of law and that those votes have to be declared as void, which may have direct bearing in the result of the election.

2. Provisions of the Panchayat Act makes it clear that the secrecy of the ballots has to be maintained and the Apex Court also had considered the very same point and has held that when a stage comes where the ballot paper has to be examined for proper determination of the matter, then it can be permitted to

be perused by the parties. In case of double voting the factors to be established are that the name of person figures in two voters list, secondly that the identity of the person is the same and lastly that he has exercised his franchise in both the booths or wards as the case may be. So, unless there is prima facie satisfactory evidence to establish that the names of alleged persons occur in the voters list of two wards and that their identify is the same, the third question will not arise for consideration. Therefore, when prima facie the court is satisfied about the first two ingredients then necessarily the court will have to permit examination of ballot papers for the purpose of proper adjudication of the matter. I make it clear that the court can insist for evidence for prima facie satisfaction and thereafter proceed with the matter in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 14/11